

Application No. 10/753,904
Response dated October 28, 2005
Office Action mail date: June 28, 2005

Atty. Docket No. 13300/2
PATENT APPLICATION

Kurtz describes apparatus having a sealed tube with tapered monocalcapillary, while Gutman describes apparatus having a linear accelerator source and multilayer mirrors. The Examiner alleges that it would have been obvious to combine the teaching of these documents and employ the multi-layer optic(s) of Gutman in the apparatus of Kurtz. Applicant respectfully traverses this rejection. The Examiner is relying on improper use of hindsight, as a multilayer optic made for a linear accelerator simply will not work successfully with a sealed tube.

At the priority date of this application (March 2003), multilayer optics were widely used with rotating anode x-ray sources. This was possible because such optics had long focal lengths which relaxed the requirements on beam acceptance angle.

However, using a sealed tube with a multilayer optic is a much different from using a sealed tube with other high brilliance sources such as linear accelerators and rotating anodes. In the former case, there is an inherent need for the multilayer optic to be of high quality. There was no such requirement in the latter case (the prior art), where it was much easier to achieve the desired gains in X-ray intensity.

Therefore, the ordinarily skilled artisan, looking at Gutman, would not have appreciated the ability even to use a multilayer optic with a sealed tube, because of the resulting problem to be solved. Likewise, the same artisan, looking at Kurtz, would not have thought to use a multilayer optic with a sealed tube because Gutman fails to teach the quality necessary for the artisan to have had a reasonable expectation of success in doing so. Therefore, it would not even have been obvious to try the combination. Even if such a standard – which is the wrong standard (*In re Geiger*, 815 F.2d. 876 (Fed. Cir. 1987) – were used, there would have been no reasonable expectation of success. This is why, prior to the present invention, no one had tried such a

Application No. 10/753,904
Response dated October 28, 2005
Office Action mail date: June 28, 2005

Atty. Docket No. 13300/2
PATENT APPLICATION

combination – there was a prejudice in the technical field against doing so. Therefore, Applicant submits that it would not have been obvious to combine Kurtz and Gutman to use a multilayer optic with a sealed X-ray tube.

In view of the above, Applicant submits that claims 1-10 in the subject application are patentable.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the telephone number listed below.

The Office is hereby authorized to charge any fees, or credit any overpayments, to Deposit Account No. 11-0600.

Respectfully submitted,
KENYON & KENYON

Dated: October 28, 2005

By: Frank L. Bernstein
Frank L. Bernstein
Reg. No. 31,484

Customer No. 25693

KENYON & KENYON
333 West San Carlos St., Suite 600
San Jose, CA 95110
Telephone: (408) 975-7500
Facsimile: (408) 975-7501

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this paper is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on October 28, 2005.

Thea K. Wagner
Thea K. Wagner